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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,315	07/09/2001	Q. Peter Zhang	17656 USA	7760
7590	02/23/2004		EXAMINER	
Howard G. Bruss, Esq. Owens-Illinois, Inc. One SeaGate - LDP #25 Toledo, OH 43666			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	17
DATE MAILED: 02/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/901,315

Applicant(s)

ZHANG ET AL.

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-16, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

***Claim Rejections - 35 USC § 103***

1. Claims 11-12, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes (D308, 167) in view of Krishnakumar (5472105) and further in view of Slat et al. Holmes teaches a container having a body portion with a circular cross section, a neck portion, and a pair of axially extending gripping panels at the neck portion. Holmes meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Holmes as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Regarding claim 12, Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

2. Claims 11, 12, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Gatten (4671412) in view of Krishnakumar '105, and further in view of Slat et al. Holmes teaches a container having a body portion with a circular cross section, a neck portion, and a pair

Art Unit: 3727

of gripping panels at the neck portion. Gatten meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Gatten as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

With respect to the gripping panels extending axially, portions 55, 6525 are axially extending.

Regarding claim 13, the note the concaved portions 43.

Regarding claims 15-16, it would have been obvious to one of ordinary skill in the art to provide the dimensions as set forth in claims 15 and 16 to provide the desired proportion of the container, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. ( see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241)

3. Claims 11, 12, 13-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Leary et al. (D250392) in view of Krishnakumar '105, and further in view of Slat et al.

Art Unit: 3727

Leary teaches a container with a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Leary meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Leary as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the gripping panels extending parallel to one another, it would have been obvious to one of ordinary skill in the art to have the two gripping panels extending parallel to one another to enable one to grasp the container easily.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Regarding claims 15-16, it would have been obvious to one of ordinary skill in the art to provide the dimensions as set forth in claims 15 and 16 to provide the desired proportion of the container, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see *In re Rose*, 105 USPQ 237 (CCPA 1955), and *In re Tanczyn*, 44 CCPA 704, 766, 241)

Regarding claim 20, note the non-circular cross-section in Fig. 6 and the two widths as set forth in the claim.

4. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the rejections of anyone of Holmes, Gatten, and Leary, as set forth above, and further in view of Krishnakumar (5279433). It would have been obvious to one of ordinary skill in the art to provide the a plurality of inwardly projection panels in Gatten as taught by Krishnakumar (Figs. 1-8) to enable one to hot fill products easily.

#### ***Response to Arguments***

5. Applicant's arguments filed 1/14/2004 have been fully considered but they are not persuasive. With respect to the rejection of Holmes and Leary combinations, the amended claims do not read over the Holmes or Leary combinations as set forth above. Applicant argues that large container cannot be made from PET based material. It is submitted that this reasoning is flawed. Krishnakumar et al. clearly teaches a large container that is made from PET. There is no reason why one of ordinary skill in the art cannot make a container with a gripping in the neck in a large dimension. There are a many large bottles that are used to hold detergents. Furthermore, as set forth above, a change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see *In re Rose*, 105 USPQ 237 (CCPA 1955), and *In re Tanczyn*, 44 CCPA 704, 766, 241).

It is noted that the inventor's declaration have been fully considered but they are not persuasive. Applicant's declaration has not provided any facts. It seems that the statements are mere personal opinions. It is noted a change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see *In re Rose*, 105 USPQ 237 (CCPA 1955), and *In*

Art Unit: 3727

re Tanczyn, 44 CCPA 704, 766, 241). Furthermore, if a bottle with complex features in Krishnakumar can be made in the claimed size, the examiner sees no reason why other types of bottle cannot be made.

### ***Conclusion***

6. This is a RCE of the same application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

Art Unit: 3727

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai  
Primary Examiner  
Art Unit 3727

